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Held at the Palais des Nations, Geneva,
on Monday, 15 November 1999, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.401/Add.1.

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The meeting was called to order at 10.18 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Azerbaijan (CAT/C/37/Add.3)

1. At the invitation of the Chairman, the members of the delegation of Azerbaijan (Mr. Khalafov, Mr. Dunyamaliyev, Mr. Mammedov, Mr. Zeynalov, Mr. Gasimov, Mr. Vahabzada, Mr. Asadov and Mr. Moussaev) took places at the Committee table.

2. The CHAIRMAN welcomed the large and eminent delegation from the Republic of Azerbaijan, and asked the head of delegation, Mr. Mammedov, to introduce the members of the delegation and to present the report.

3. Mr. MAMMEDOV (Azerbaijan) thanked the Committee for the opportunity to report on the latest measures taken in Azerbaijan to pursue the democratization of the country and to ensure rights and freedoms, particularly with regard to implementing of the requirements of the Convention. The report had been drawn up by a special working group made up of authoritative specialists from the forces of law and order and the judiciary.

4. As a year had elapsed since the initial report had been submitted, he would focus mainly on measures taken since then. Azerbaijan had been independent since October 1991, and a member of the United Nations since March 1992. Having thrown off the Soviet yoke, Azerbaijan had immediately made the development and strengthening of democratic institutions and universal human values the priorities of its internal and external policies. Over a relatively short period, and despite the problems of transition, Azerbaijan had become actively engaged in greater European integration, and thanks to a consistent policy aimed at implementing the universal norms of the rule of law, it had succeeded in establishing democratic institutions. The multiparty system, freedom of the individual, speech, the press, and conscience, protection of basic human rights and freedoms, and the sovereignty of the law formed the basis and driving force for the functioning of the State and society.

5. A key step towards the democratic rule of law had been the adoption on 12 November 1995, after a referendum based on universal suffrage, of the first Constitution of independent Azerbaijan, which reflected the principles of the Universal Declaration of Human Rights, and laid the ground for subsequent legal reforms in the country. The Constitution recognized that the main aim of the State was to safeguard human rights and basic freedoms.

6. President Aliyev, as a consistent supporter of democracy and human rights, on the eve of the fiftieth anniversary of the Universal Declaration of Human Rights had issued two decrees, one "on measures to ensure human rights and freedoms" and another "on additional measures to ensure freedom of speech, thought and information", as well as the directive "on celebrating the fiftieth anniversary of the Universal Declaration of Human Rights", which clearly defined the Government's tasks in the immediate future. Azerbaijan had adopted a State programme on human rights, on 30 November 1998 it had established a human rights research institute and had created a human rights subdivision within the presidential executive apparatus.

7. Azerbaijan had acceded to all the basic international instruments and many other multiparty agreements in the field of human rights. Its initial reports on the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Elimination of All Forms of Racial Discrimination, had already been considered by the respective United Nations bodies.

8. New legislation was being drafted to reform the legal and judicial system, with the particular aim of making it more fully reflect the international democratic institutions which had been set up over several decades. A clear example of that tendency was the initiative by the President of the Parliament (guided by article 3 of the Universal Declaration, which proclaimed the right to life) abolishing the death penalty in the east of the country in February of the previous year.

9. One of the most important provisions of the Convention was the requirement to include a definition of torture in domestic legislation. Article 46 of the new Constitution of Azerbaijan already strengthened the prohibition of torture, and it was currently the turn of the criminal legislation to be reformed. There were already several articles dealing with responsibility for activities included in the understanding of "torture". The main one was article 177 of the Criminal Code, which said that any pressure by an investigator to obtain evidence, including through threats, violence or degrading treatment, would lead to punishment of between three and eight years' imprisonment. Article 115 of the new Draft Criminal Code, currently before Parliament, attempted to fully reflect the definition of torture as given in article 1 of the Convention, and carried sentences of between seven and 10 years' imprisonment for the offence. The delegation had brought an English translation of the relevant extract, and would be grateful for comments and suggestions by the Committee so that they could integrate any necessary changes at the draft stage.

10. Effective observance of the norms of the Convention was, to a great extent, dependent upon the existence of a genuinely independent judicial system, and clear separation of the legislative, executive and judicial branches. Progressive new laws had been adopted on the Constitutional Court, on courts and judges, on compensation for harm caused to physical persons through the illegal actions of the investigation, prosecution and judicial bodies, and on appeals in court against any actions violating the rights and freedoms of the citizen. The Constitutional Court, in just over one year of existence, had already taken 19 decisions related to safeguarding essential human rights.

11. The Legal Judicial Council had been set up in December 1998 to organize new courts, and train a new qualified judiciary. Azerbaijan's judicial legislation had been approved by international experts and hinged on genuinely democratic principles. The independence of judges rested on their depoliticization, irremovability and inviolability, and on non-interference in their activities and the establishment of responsibility for their actions. Candidates were tested in accordance with international norms. Courts could not take on functions unconnected with the delivery of justice and emergency courts were prohibited. Courts were no longer supervised by the Public Prosecutor's Office, and acted independently on the basis of the principles of justifiability, the presumption of innocence, and equality before the law. An appeals system had

been introduced and court decisions could be overturned only by the ruling of a higher court. The judicial system enjoyed additional technical resources following a recent Presidential Decree.

12. Parliament was currently giving a final reading to bills on notaries, the legal profession, the police, investigative services, and the Public Prosecutor's Office. The latter three, dealing with State organs, were particularly relevant to the Convention. The Police Bill provided for a special norm, "the activity of the police in safeguarding the human rights and freedoms of the citizen", which specifically prohibited any action to humiliate or degrade and any pressure on accused persons or suspects to give information or confessions, including the use of threats, torture or other physical or psychological means (article 5). The respect and observance of basic human rights and freedoms was enshrined in many other articles of the Bill. Similarly, article 8 of the Bill on Investigative Activities prohibited the use of violence, threats, blackmail and other actions which limited human rights and freedoms.

13. The Bills on the Public Prosecutor's Office and the National Security Services contained similar provisions. The powers of the Public Prosecutor's Office had been radically altered in the conditions of new democratic statehood; from an organ responsible for ubiquitous surveillance, it had been transformed into a guarantor of the rights and freedoms and legal interests of the citizen. It no longer supervised the courts or the implementation of the law in places of detention, and retained only the functions of directing investigation procedures, prosecuting the State's case in the courts, and considering citizens' complaints and depositions. A copy of the Bill was available in English.

14. One of the most important requirements of the Convention was the right for a person under arrest to be brought before a court or judge immediately, in order to verify the legality of the detention. That issue had been a subject of special consideration at the meeting of the national Constitutional Court in May 1999, which had recognized the absolute need to guarantee that right. According to the new laws, sanctioning an arrest was the exclusive prerogative of a court. The same was true for authorizing telephone taps, mail interception, and any other procedural constraints which interfered with the constitutional rights and freedoms of the citizen. All those areas had previously been the preserve of the Public Prosecutor's Office.

15. Consistent, targeted work was continuing on reform of legislation and the State's structure, with support from international organizations such as the World Bank. The Presidential Decree of 28 December 1998, "on the creation of a special State Commission to carry out reforms in the system of the State administration of the Azerbaijan Republic", had delineated four key directions for reform, the most important of which were those in the legal and judicial system. The information contained in the report would enable the Committee to judge how effective the State Commission had been in those reforms.

16. The Presidential Decree of 11 February 1999, "on measures to strengthen legality, to ensure the correct carrying out of sentences, and to implement legal reforms in corrective-labour institutions and investigative prisons", was the basis for a programme of measures, including legislative measures, to reorganize prisons and detention centres in conformity with international standards. Azerbaijan had been the first country of the Commonwealth Independent States (CIS), to transfer control over corrective-labour institutions from the Ministry of Internal

Affairs to the Ministry of Justice, which under the Presidential Decree of 13 October 1999 had also been given responsibility for remand centres. Over the course of two and a half years, Azerbaijan had enacted four Amnesty Acts, applicable to 47,163 persons. Additionally, the President had pardoned 2,052 persons, including several who had been sentenced to death.

17. On 11 December 1998, the President had signed a law adopted by Parliament "on the accession of the Azerbaijan Republic to the Second Optional Protocol to the International Covenant on Civil and Political Rights". Azerbaijan had also concluded a technical cooperation agreement with the Office of the United Nations High Commissioner for Human Rights (OHCHR), aimed at improving the human rights protection infrastructure. That programme had already organized a study course for lawyers, translated into Azerbaijani, several OHCHR publications on human rights, and produced a textbook on human rights for police forces and primary and secondary schools. The Standard Minimum Rule for the Treatment of Prisoners (Geneva, 1955) and other related European standards had also been translated into Azerbaijani. Several seminars had been held within the framework of the Council of Europe's programme to harmonize penitentiary systems, with the participation of representatives of the relevant ministries and departments of Azerbaijan. On the recommendation of the Council of Europe, the establishment of an independent inspectorate to monitor cases of detention was currently being considered. A seminar had been held on the institution of the Ombudsman, with the aim of introducing it in the future.

18. That all that testified to Azerbaijan's steadfast determination to pursue the democratic transformation of society and the establishment of institutions most effective in safeguarding human rights and freedoms. The measures were being taken despite their significant cost, at a time of economic transition seriously complicated by Armenia's occupation of 20 per cent of Azerbaijan's territory, which had led to 1 million of the 8 million-strong population becoming refugees and displaced persons. Many of them were living in inhuman conditions, deprived of basic rights to housing, work, education or medical aid. The presence of a foreign military occupation force, which had been guilty of total ethnic cleansing, was a serious obstacle to the implementation of the Convention in those areas no longer under the control of Azerbaijan. Many serious violations of international humanitarian law had been committed by the occupation forces, including extrajudicial executions, mass shootings, torture and other cruel and inhuman treatment and punishments inflicted on civilians, hostages and prisoners of war. Nevertheless, the Government of Azerbaijan was committed to a peaceful solution to the conflict, and at its initiative a six-year ceasefire had been observed. They hoped for a speedy settlement in accordance with the United Nations and OSCE resolutions on territorial integrity.

19. Azerbaijan was attempting to take all necessary measures to strengthen legality and observance of the norms and requirements of international conventions and agreements. However, they did not deny that certain isolated cases of abuses did occur, as in any country. The violations were not systematic or frequent, but were individual occurrences, each of which met with concrete measures. During 1998 and the first nine months of 1999, 64 police officers had been brought to trial for overstepping their authority and abusing their power by inflicting violence, humiliation or other unlawful treatment. A number of others had been punished under disciplinary procedures, including exclusion from the police force. Steps were being taken to ensure redress for the citizens whose rights had been violated.

20. Azerbaijan was determined to continue with its great task of democratization and reform The country was open to frank dialogue, and counted on the Committee's recommendations to help it become part of the world community.

21. Mr. YAKOVLEV thanked Mr. Mammedov for his very informative introduction, which showed that the Parliament of Azerbaijan was genuinely trying to improve democracy and make good use of its independence. Whilst the Committee entirely supported their efforts, members specifically looked at the implementation of the Convention against Torture as a key indicator of a country's progress in human rights. He assured the delegation that the Committee's comments and questions were intended to be constructive and helpful, even if sometimes information from NGO sources made unpleasant hearing.

22. He welcomed the information given concerning the inclusion of a special section on torture in the new draft criminal legislation. However, that was an objective which very few countries had managed to fulfil. In far too many, the Constitution said one thing about torture and the law another. In that connection, the report was correct up to a point in stating that the purpose of article 1, paragraph 1 of the Convention was to define "torture" for the purposes of the Convention by specifying which acts fell within its scope. The Convention as a whole, however, was concerned with the legislation of all the countries where the Convention was applied, and was thus primarily concerned with a State's realization of the Convention's objectives in accordance with the terms used in the Convention.

23. Even the worst forms of violent behaviour recognized under criminal law were different from torture perpetrated by an official on behalf of the State, for example in obtaining a confession. Torture occurred in many varied situations and the Committee was well aware of the difficulties involved in attempting to develop mechanisms to prevent it. Unfortunately, it was too often the case that a State which had officially declared its intention to prevent torture turned a blind eye to acts of torture committed by special forces. Moreover, the Committee frequently came across cases in which the political will to deal with torture was present, but the State sadly lacked the effective legal mechanisms needed to carry out the task.

24. Turning to the crucial stage of pre-trial detention, when a prisoner was most at risk of torture, he welcomed the fact that approval for arrest now had to be given by a judge. Nevertheless, Azerbaijan was only beginning the process of establishing an objective mechanism for protecting detainees. Only at the time of the next report was there likely to be any real indication of significant progress in that area. Likewise, while the fact that the victims of cruel treatment were now entitled to bring complaints against investigators was welcome, court jurisdiction would need to be extended much further in that area in order to avoid repeating the kind of collusion and corruption which had characterized appeal procedures under the old Soviet system. He would like to know more about the current conditions under which lawyers were engaged, and whether a complainant had the right to choose his lawyer. In the USSR, the role of lawyers had been much less significant, but in the future a clear definition of their role would constitute a crucial safeguard in the context of torture prevention.

25. With regard to prisoners being held incommunicado, he inquired what mechanisms were in place to prevent investigators delaying medical examinations until the physical traces of torture on the victim had disappeared. Also, what were the legal limits on indefinite extension of

the pre-trial investigation period? In many countries, even after the conclusion of the investigation, defendants could spend a long time in custody pending trial, and without procedural safeguards in place, such people were highly vulnerable.

26. Turning to article 15, in connection with the admissibility of evidence received under torture, he said that the relevant part of the Criminal Code was very general, and the provision allowing such testimony to be struck from the record was open to interpretation. A clear indication of the need to apply the principle of inadmissibility on a broader basis in Azerbaijan was the case of Elder Agayev in 1996. According to information provided for the Committee by Human Rights Watch, the court in question had been in possession of the medical documents testifying to Agayev's beating, had denied petitions for a forensic medical examination, had ignored the fact that he was able to identify and name the officers who had beaten him, and had further ignored the testimony of a witness who had seen him being taken to receive medical treatment for the injuries he had sustained in custody. The then Chairman of the Azerbaijan Supreme Court had told Human Rights Watch that during the trial the judges' uncertainty regarding Agayev's guilt had caused them to hand down a 12-year sentence rather than a more severe sentence usually given for murder. He also stated that he believed that the testimony of two witnesses in the case who had been instrumental in proving Agayev's guilt had been obtained from them through "violations of procedures". The comments of the Chairman of the Supreme Court served to acknowledge that torture did in fact occur, and also reflected the widespread disregard for the presumption of innocence in Azerbaijan. Doubts in the minds of the judges arising from insufficient evidence to convict should be grounds for dismissal of charges rather than lower penalties.

27. In conclusion, he welcomed the administrative changes which had taken place at ministerial level and the improvements made in the past two years. However, cases of torture were still being widely reported, and it could hardly be said that illegal coercion no longer existed in Azerbaijan. He commended the delegation on its thorough report, and called on it to collaborate fully with the Committee in the spirit of openness it had already shown.

28. Mr. SØRENSEN (Alternate Country Rapporteur) thanked the delegation for a very extensive report and highly informative introduction. The Committee was well aware of the severe problems confronting Azerbaijan within its borders. In that regard, article 2 of the Convention stated clearly that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture". Like the previous speaker, he appreciated the efforts that had already been made to eliminate torture in Azerbaijan, and emphasized that his comments were not intended to be of a condemnatory nature, but as the first steps in a dialogue.

29. Referring first to article 10, he noted that education and training were key aspects of the prohibition of torture, particularly so in the case of a country such as Azerbaijan which was undergoing a profound transition. His first questions thus related to the training of prison staff and investigators, in particular the measures being taken to ensure that standards were being maintained following the transfer of staff from the Ministry of Internal Affairs to the Ministry of Justice. He would like to know whether the prohibition of torture was covered in the basic training programmes for police and prison staff. If so, approximately how many hours were devoted to the subject? Who acted as instructors? Were medical personnel involved? What was

the selection procedure for the recruitment of the police and prison staff? Were interviews held, and were the personalities of the candidates assessed? Did police and prison staff receive any further training? Such training should, in the Committee's opinion, be provided to everyone in the police and prison administrations, including the highest decision makers.

30. Azerbaijan had recently undergone a change in its legal and criminal system and in its national values. Presumably, the behaviour of prison staff was expected to be different from what it had been under the old system. How had police officers, investigators, prison staff and decision makers been prepared for such changes? Was there a selection system to decide who would remain in service and whom to dismiss for being unable to adapt to the new system?

31. Article 10 of the Convention mentioned the obligation of the State to inform and educate medical personnel, among others. The periodic report made no mention of education and information for medical staff. On the other hand, Physicians for Human Rights (UK) had issued a report according to which doctors took part in torture, for example by verifying that the victims were fit to withstand ill-treatment, by being present during the torture, by indicating new methods, by treating victims and preparing them for further sessions or by falsifying medical records. The problem was an enormous one and could be encountered throughout the world. In his opinion, every doctor should receive training in the prohibition against torture. Doctors working in prisons, with the police or in forensic services were especially at risk and must be informed of the prohibition with greater urgency. It was to be hoped that the Ministry of the Interior would see to it that the Ministry of Justice and the Ministry of Health ensured continuity in the training of prison staff.

32. The periodic report mentioned the use of exile as a punitive measure. In previous times, exile had in his country been considered the second most severe form of punishment after the death sentence. Was that sentence imposed on Azerbaijani citizens, or only on foreign nationals? The report also stated that the Procurator-General was responsible for supervision of the execution of sentences. The Committee had learned that a new law was currently under consideration which would overhaul the correctional system. Since it was important that the office responsible for supervision of the execution of sentences should be regarded as impartial by both the public and the Parliament, he would like to know whether the Bill currently under consideration would introduce any changes in the system. Were any other bodies allowed to inspect prisons and police stations? The report stated that certain non-governmental organizations (NGOs) regularly visited corrective labour establishments. Could the delegation tell the Committee which NGOs were involved in such work, how often they were able to have access to the facilities and whether they were allowed to visit them unannounced? In his view, the only real way to ensure proper supervision of correctional establishments was through a genuinely independent inspectorate, which issued annual reports and subjected the system to sufficient scrutiny.

33. Following the coup attempts of 1994 and 1995 and the armed conflict with Armenia, many people had been incarcerated, who would be eligible as prisoners of war or political detainees for visits by the International Committee of the Red Cross (ICRC). Yet ICRC visits were not authorized. Could the delegation explain why? It would be regrettable if the country prohibited visits by a truly independent, impartial organization, as that would give the impression it had something to hide.

34. The report mentioned three regimes of incarceration: "general", "intensive" and "strict". Were inmates assigned to one regime or another by order of a judge? Were they generally assigned to the harshest regime and subsequently rewarded for good behaviour with improved conditions? What was meant by "short visits" and "long visits"? Apart from the number of parcels the inmates were authorized to receive, were there any other differences between the various regimes? Did all inmates, even those in solitary confinement or undergoing other forms of punitive detention, have access to the open air for at least one hour every day, or was deprivation of that right used as a disciplinary measure?

35. It was generally accepted that four safeguards protected detainees from-ill-treatment: the right for suspects to be informed of their rights; access to a lawyer; access to a doctor; and the right to inform relatives of the arrest. It was his understanding that suspects could not inform their relatives of their arrest until they were indicted, which could be weeks after the initial arrest. Did the new Bill remedy that situation? Would it grant access to a lawyer prior to the beginning of the investigation and before charges were brought? Under the new law, he trusted that the judge would be the one to set the conditions and length of pre-trial detention. Would it establish a limit for the duration of remand? If the detainee was found guilty, would the time spent in remand be deducted from the final sentence which would be handed down?

36. According to the report, the Department of Investigations had not investigated any criminal cases involving torture, and no cases of torture had occurred in the course of its investigations. That was not surprising, since the State party had informed the Committee that there was no specific crime of torture in its legislation, and it provided yet another reason for changing the law and adopting provisions specifically making torture a crime. Under article 12 of the Convention, the State was obliged to proceed to a prompt and impartial investigation wherever there was reasonable ground to believe that an act of torture had been committed. That provision was crucial to the prevention of ill-treatment. According to Amnesty International, in some cases victims of ill-treatment had waited to make their allegations before a judge, only to have them disregarded in court. Many other victims reportedly refrained from lodging complaints because they believed they would have no effect, as the authorities were not reputed to prosecute perpetrators of torture in a vigorous and impartial manner. According to a recent report, 37 police officers from the OPON special services had engaged in severe acts of torture involving 24 defendants, and journalists and demonstrators too had been subjected to ill-treatment. What was the opinion of the delegation about those allegations?

37. Article 14 of the Convention obligated the State party to ensure redress and fair and adequate compensation for victims of torture. The periodic report simply stated that liability for full compensation rested with the party causing injury. In cases where civil servants acting on behalf of the State were the perpetrators, would that include the State? Victims of torture could initiate proceedings to claim damages under the Civil Code. But many victims would be in no condition to engage in such action. Was it also possible for victims to be awarded compensation under the Criminal Code? When a penal case resulted in a finding that torture had occurred, was compensation automatically awarded, or did the victim have to bring civil action?

38. The international community had established a United Nations Voluntary Fund for Victims of Torture, which of course was in need of support. By contributing to the Fund, States

showed their concern for victims of torture and their awareness in respect of the problem of torture. Azerbaijan was of course facing an economic crisis, but a contribution to the Fund, even a symbolic one, would do much to reaffirm its commitment to combating torture.

39. Mr. SILVA HENRIQUES GASPAR welcomed the courageous step taken by Azerbaijan in abolishing the death penalty. He also wished to find out more about the corrective labour establishments referred to in the report. What were the conditions of work in such establishments? Which convicts worked in them, and what type of work did they do? Did they all volunteer for such work? Were they remunerated, and if so, to what extent?

40. He would like to learn more about how judges were appointed and how their independent status and tenure was guaranteed. Did judges enjoy immunity for their rulings? Why had the remand centre referred to in paragraph 161 been kept, and why had the regulations governing the operation of remand centres not been changed? Was it planned to do so in the future?

41. Mr. YU Mengjia wondered whether there was not a contradiction between paragraphs 251 and 253, and he therefore asked what department was mandated to investigate allegations of torture. He would also like to know whether the Department of Investigations was independent enough to inquire into allegations of violations within the Ministry of National Security (para. 252).

42. Mr. EL MASRY asked the delegation to comment on the case, reported by Amnesty International, of Aydyn Ozdemir, a member of the Kurdish Workers' Party (PKK), who had allegedly been detained in the Azerbaijani enclave of Nakhchivan on 19 January and subsequently handed over to the Turkish authorities. Dozens of other Kurds had also reportedly been returned to Turkey. Had any precautions been taken to ensure that such persons were not subjected to torture?

43. The CHAIRMAN, speaking in his capacity as member of the Committee, and pursuing further a question asked by Mr. Silva Henriques Gaspar, said he would like to know who selected and removed judges and whether they had tenure.

44. Concerning the amnesty laws, he pointed out that the material which the Committee had received from Amnesty International and a local non-governmental organization (NGO) contained cases with a number of striking similarities: they often involved persons arrested on alleged drug charges, from whom money was extorted and who were then brutalized; their relatives were often informed so as to encourage them to pay. What was being done to prevent, prohibit and prosecute such practices? Another alarming feature was that when complaints were made, the complainant's relatives then became the targets of police threats. Several cases involved medical reports which had disappeared or been altered after the complaint had been lodged. One of the main purposes of the Convention was to ensure that a person who committed torture did not go unpunished. Accordingly, there must be structures for conducting objective investigations quickly and effectively and, where appropriate, for prosecuting the perpetrators. He agreed with Mr. Sørensen that as torture was not defined in the Criminal Code, it was hardly surprising that there had been no convictions for that crime!

45. The four amnesty laws were obviously general, which meant that they concerned both serious and trivial offences. Had any crimes been excluded from the amnesty? If the amnesty laws also covered conduct that might constitute torture, then they were clearly in breach of the Convention and were probably also in violation of customary international law, torture being a crime against humanity.

46. The Azerbaijani delegation withdrew.

The public part of the meeting rose at 12 noon.